

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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FRANK M. PINDEL,

Petitioner,

vs.

NORMAN J. HOLGATE, as Trustee in Bankruptcy  
of the Estate of FRANK M. PINDEL, Bank-  
rupt, and the BANK OF NEZ PERCE,  
Respondents.

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In the Matter of FRANK M. PINDEL,

Bankrupt.

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Additional Transcript of Record

In Support of Petition for Revision Under Section 24b  
of the Bankruptcy Act of Congress, Approved  
July 1, 1898, to Revise, in Matter of Law,  
Certain Orders of the United States  
District Court for the Central  
District of Idaho.

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*In the District Court of the United States for the  
Central Division, District of Idaho.*

IN BANKRUPTCY.

In the Matter of FRANK M. PINDEL,

Bankrupt.

**Order [of Referee in Bankruptcy Directing Sale of  
Real Estate of Bankrupt].**

ORDER OF SALE.

The foregoing Petition having been duly filed and having come on for hearing before me, and it appearing that notice of at least ten days has been given to creditors of the sale of the land described in the said Petition and that at the meeting of the creditors so called a majority of the creditors and a majority in the amount of claims represented voted to sell the said land, now, after due hearing and due consideration of the decision of the said Court and of the Appellate Court in the premises and said vote of creditors to sell the real estate in said Petition described, it is ordered that the said Trustee, Norman J. Holgate, be and is hereby authorized, after four weeks' publication of notice and posting of written notice in three public places in Lewis County, Idaho, for the same period of time, to sell the real estate of the bankrupt in his petition described, at public auction at the door of the courthouse (where the District Court in and for Lewis County held its last term of Court) in the town of Nez Perce, Lewis County, Idaho, receiving no bid less than \$5,000.00, keeping an accurate account of the property sold and

the price received therefor, and to whom sold. He shall, from the proceeds of the sale, pay to the bankrupt and his wife said sum of Five Thousand (\$5,000.00) Dollars, less costs and expenses of review in U. S. Circuit Court of Appeals, and shall file said account at once with the Referee, reporting the balance for payment of fees and expenses [1\*] and creditors' claims.

Witness my hand this 1st day of March, A. D. 1913.

G. ORR McMINIMY,

Referee in Bankruptcy.

[Endorsed]: Filed May 6, 1914. A. L. Richardson, Clerk. [2]

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**[Affidavit of Norman J. Holgate Re Order of Sale.]**

**ORDER OF SALE.**

*In the District Court of the United States for the  
Central Division, District of Idaho.*

**IN BANKRUPTCY.**

In the Matter of FRANK M. PINDEL,

Bankrupt.

State of Idaho,

County of Nez Perce,—ss.

Norman J. Holgate, being first duly sworn, on his oath says: That he is the Trustee in Bankruptcy, of the Estate of said Frank M. Pindel.

That he is the same person to whom was issued the order dated March 1st, A. D. 1913, copy of which is attached to his return of sale hereto attached, and

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\*Page number appearing at foot of page of original certified Record.



in said return marked Exhibit "A," and the same is a full and true copy of the original order returned into the office of the Referee in Bankruptcy in and for Lewis County on April 23d, 1913.

That affiant had been seeking to obtain for some six months an order of sale for the real estate prior to the date of said order of March 1st, 1913.

That the sale of the real estate as set forth in said return was legally made and fairly conducted, the land selling for much more than the appraised value, and no objection has been made to said sale or to the manner of its conduct.

That at the time of the making of the sale of said land on April 5th, 1913, pursuant to notice published and posted as in said return mentioned, the said Referee was away from Idaho, being, as affiant was informed, in Portland, Oregon. That immediately on learning of his return, this affiant verified his return and at once caused the same to be mailed to said Referee in Bankruptcy on [3] April 23d, 1913. And no action has as yet been taken thereon.

That the exhibits attached to the annexed return of sale are full and true copies of the original documents returned into the office of said Referee in Bankruptcy, making the annexed return of sale a duplicate of the copy filed with said Referee in Bankruptcy, except as to his name on the order for the sale of the real estate; that the document attached to this return is a full and true copy of said original order.

The land sold by affiant is timothy hay land, and the bankrupt and his wife, Sarah E. Pindel, are re-

taining the same by virtue of the delay of the Referee, apparently to secure the hay therefrom the present season.

The said land is now being occupied by said bankrupt and his said wife and the purchaser of said land is without remedy or recourse to secure the use, occupation and profits of said land by reason of such failure and neglect to confirm said sale and then directing a conveyance by this affiant to such purchaser, or refusing a confirmation affiant might resell the land or making it possible to sell the land in accordance with the order of this Court dated May 20, 1910, and affirmed on hearing on petition for review by said Sarah E. Pindel in the Circuit Court of Appeals at San Francisco, Cal.

Affiant asks that some action be taken by this Court to the end that affiant may be enabled to perform his duties, pay to creditors what will be due them, receive his own commission and be discharged without further vexatious and interminable delays, and your Trustee will ever pray, and further he now saith not.

NORMAN J. HOLGATE.

Subscribed and sworn to before me this 23d day of May, 1913.

[Seal]

E. O'NEILL,  
Notary Public. [4]

[Return of Trustee in Bankruptcy Re Sale of Real Estate.]

*In the District Court of the United States for the Central Division, District of Idaho.*

IN BANKRUPTCY.

In the Matter of FRANK M. PINDEL,  
Bankrupt.

RETURN OF SALE OF REAL ESTATE.

To the Hon., the District Court of the United States for the Central Division, District of Idaho, the undersigned Trustee in Bankruptcy of the estate of Frank M. Pindel respectfully reports and makes return to the Court of his proceedings under an order of sale issued to him by said Court, directing him to sell the real estate of the said bankrupt, and to report the same and file his account with the Referee in Bankruptcy. He now so reports and would cause the Court to know and be informed:

That pursuant to said order, a copy of which and the petition upon which the same was based are hereto attached, marked respectively Exhibit "A" and Exhibit "B," and made a part hereof as fully as if here written in full, he caused notice of the sale of the real estate in said petition described to be published in "The Nez Perce Herald," a weekly newspaper published at Nez Perce, Lewis County, Idaho, and in general circulation in Lewis County, in the State of Idaho, in which county the said land is situated, for five weeks successively, to wit; from and including March 6th, 1913, to and including April



3d, 1913, a copy of which notice as so published, together with the affidavit of the publisher of the said paper is hereto attached, marked Exhibit "C" and made a part hereof as fully as if here written in full. Also on the sixth day of March, 1913, the undersigned securely posted in plain sight in three of the most public places in Lewis County a plainly written typewritten copy of notice of said sale, a copy of which typewritten notice with the affidavit of such posting is hereto attached, marked Exhibit "D," and made a part hereof as fully as if here written in full. [5]

That pursuant to said order and said notice of time, place and terms of said sale, the undersigned Trustee at the time and place in said notices mentioned, to wit, at 10 o'clock A. M. of April 5th, 1913, at the front door of the Lewis County District courtrooms (Nez Perce Opera-house Building in Nez Perce, Idaho, being the place where the District Court in and for Lewis County was holding, or had held its last term of court), the undersigned in person appeared and publicly in a loud voice to many persons already assembled announced the sale of said land at public auction, reading the said order directing the sale by the undersigned and the notice of said sale so published and posted, describing the lands and announcing the terms of sale.

The first bid made was \$6000.00. Numerous bids were made by those present and ample opportunity given to all desiring to purchase to make their bids. After all bidding had ceased and all persons had had full and ample opportunity to bid for said land the undersigned after announcing in a loud voice



slowly three times that the land was going at \$10,500, the highest sum bid. The land was then struck off to and publicly announced as sold to Orville M. Collins for the sum of \$10,500.00. The said Orville M. Collins' said bid of \$10,500.00 was the highest and best bid made, and no bid equalling or exceeding that was made at any time.

At the time of so striking off said land to said Orville M. Collins he paid to this Trustee ten per cent of the purchase price, \$1050, pursuant to the terms of sale announced in the notice. That said sale was legally made after notice and was fairly conducted; that said sum so bid is largely in excess of the appraised value of said property and is the full cash value thereof.

That the expenses of said sale were as follows:

Publishing notice of said sale in "The Nez Perce Herald" 5 weeks consecutively from and including March 6th, 1913, to and including [6] April 3d, 1913.....	\$12.35
Trip to Nez Perce, Idaho, place of sale, from Culdesac, Idaho, and posting notice of said sale on March 5th and 6th, 1913, at said Nez Perce, at Vollmer, Idaho, and Ilo, Idaho, three of the most public places in Lewis County, Idaho, in which county said land is situated, and return fare....	3.70
Also hotel bill and board on said trip.....	3.50
Round trip fare Culdesac to Nez Perce and return .....	3.70
Board and room April 4, 5 and 6, 1913, in at-	

tending sale of the real estate at Nez

Perce, Idaho, on April 5th, 1913..... 4.75

All the property to be sold of said estate consisted of real estate. A large amount of personal property was taken by this Trustee as well as the real estate, as appears by the Inventory and Appraisement on file, and the question of what property belonged to the bankrupt's estate and could be sold, both as to the personal property and real estate, was contested by the bankrupt and his wife. A number of hearings were involved in the questions before the Referee in Bankruptcy. An adjudication by the United States District Court for the Central Division, District of Idaho, was sought and obtained and a revision of that decision was petitioned for by the said bankrupt and his wife, Sarah E. Pindel, and resulted in the affirmance of the decision of the District Court in the determination that the personal property was exempt to Sarah E. Pindel, and the real estate should be sold on failure for 30 days to pay into court the sum of \$4,000, awarding to the Trustee his costs in the Circuit Court of Appeals in the sum of \$285.70 against the said bankrupt and his wife, Sarah E. Pindel, for which execution might be had.

And whereas the entire expense incurred in the handling of said estate was the result of the litigation by the said bankrupt and his wife, Sarah E. Pindel, resulting in the direction of the Hon. District Court of the United States for the Central Division, [7] District of Idaho, affirmed by the Circuit Court of Appeals, awarding costs to this Trustee and directing the sale of the real estate as

aforesaid: This Trustee therefore presents herewith the expenses of the holding of said property and the expense of the litigation before the Referee and said courts in resisting the sale of the land as constituting an expense in the sale thereof, the entire estate of the bankrupt, and reports the same as follows:

In the said litigation it was necessary to employ counsel in the numerous hearings before the Referee and in the United States District Court aforesaid and in said Circuit Court of Appeals, and this Trustee has been charged by his counsel in this matter the sum of.....\$610.00

In preserving the personal property from being taken away, dissipated or lost, it was necessary to employ a keeper of the personal property. In spite of daily care two of the ten hogs were taken by the said bankrupt and his wife and sold to butchers. To such keeper there was paid up to the time of the decision in the Circuit Court of Appeals the sum of \$433.00 and said keeper claims the further sum of \$254.00.....\$433.00

In appraising the taking over the property and in the said hearings before the Referee, your Trustee expended labor and a large amount of time as follows:

Trip from Culdesac to Vollmer and return

railway fare, October 6th and 10th, 1910.\$ 2.30

Team hire taking appraisers from Vollmer to



land and place where personal property was, October 7, 1910.....	\$ 2.50
Four days' time attending to appraising, meeting with great delays and opposition from the bankrupt.....	\$12.00
Board and lodging 4 days.....	\$ 5.85
Hearing before Referee at Lewiston, Idaho, Dec. 30, 1910, one day.....	\$ 3.00
Train fare Culdesac to Lewiston and return..	\$ 1.30
<b>[8]</b>	
Board and room Dec. 31, 1910—Jan. 1, 1911..	\$ 1.90
Jan. 1st, trip from Culdesac to Vollmer and return to look after stock lost, returning Jan. 7th, 1911.....	\$ 1.30
To 5 days' labor looking for stock taken and sold by the bankrupt and his said wife..	\$15.00
Feb. 24, 1911, attending and testifying before Referee hearing at Lewiston, Idaho, 1 day and round trip fare.....	\$ 4.30
Board and room Feb. 24—25, 1911.....	\$ 1.90
March 4, 1911, attending hearing before Ref- eree .....	\$ 3.00
March 4, 1911, expense involved, fare round trip \$1.30 and room and board \$1.90....	\$ 3.20
There was also further expenditure in the pay- ment of appraisers and witnesses as follows: The en- tire litigation being instituted and carried forward by the bankrupt and said Sarah E. Pindel, his wife, in claiming all property as nonsalable and exempt as against the Trustee, to wit:	
Oct. 14, 1910. Cash to Gus L. Fisher, apprais- er's fee .....	\$ 6.30



Oct. 27, 1910. Cash to Wm. H. Abel, appraiser's fee .....\$ 7.70

Dec. 31, 1910. Cash to Chas. S. Boren for taking and transcribing evidence of Bankrupt and witnesses.....\$ 8.45

Feb. 24, 1911. Cash to W. L. Lyons, witness fees, coming from Vollmer, Idaho, 45 miles each way, 1 day.....\$ 7.10

Feb. 25, 1911. Cash to Charles S. Boren for 1/2 of Stenographer's bill taking of evidence .....\$80.00

Feb. 25, 1911. Cash to E. M. Newbill, witness fees, one day, and mileage from Ilo to Lewiston, 45 miles each way.....\$ 4.00

Feb. 25, 1911. Cash to Wm. H. Gage, witness fees, one day, mileage from near Genesee, mileage 15 miles each way.....\$ 5.50

Feb. 25, 1911. David Schwark also attended as a witness coming on his expense from Vollmer, being keeper or custodian of the bankrupt's property and no witness fees charged. [9]

March 4, 1911. Cash to E. M. Newbill, witness fees, one day, and mileage coming from Ilo, 45 miles each way.....\$ 6.50

March 6, 1911. Cash to Chas. S. Boren, balance of stenographer's fees taking and transcribing testimony .....\$ 8.20

This Trustee therefore prays that said sale be confirmed, and that conveyance be ordered issued to said purchaser on the payment of the balance of said purchase price; and from the \$5,000 involved in said

homestead right of the bankrupt and Sarah E. Pindel there be ordered deducted, 1st, the direct expenses of said sale the first five items above mentioned, \$28.00, together with said court costs, \$285.70, with interest thereon from Feb. 13th, 1912, making \$337.60, and, 2d, the balance of said sums expended in the litigation caused by the bankrupt and his wife in hindering and delaying all efforts of the Trustee to dispose of property for the benefit of the creditors, holding all as exempt and not subject to the claims of creditors making the additional sum of \$1,234.30, or a total of \$1,571.90 and the balance of said \$5,000, or \$3,428.10, be ordered paid by this Trustee to said bankrupt and wife, and that the balance of said \$10,500 over said \$5,000 be ordered distributed in payment first of fees and commissions of Referee and Trustee and the balance to the creditors of said estate of said bankrupt, and the estate closed, there being no other property to be administered upon.

NORMAN J. HOLGATE,

Trustee of Estate of Frank M. Pindel, Bankrupt.

State of Idaho,

County of Nez Perce,—ss.

Norman J. Holgate, being first duly sworn, on his oath says that he is the Trustee in Bankruptcy of the Estate of Frank M. Pindel and that he has signed the foregoing report as such Trustee. That he has heard read said report, knows the contents thereof, and that the statements therein contained

he believes to be true. [10]

Farther affiant saith not.

NORMAN J. HOLGATE,

Subscribed and sworn to before me this 23d day of April, 1913.

[Seal]

E. O'NEILL,

Notary Public in and for Nez Perce County, Idaho.

Exhibit "A." Same as ORDER OF SALE, page 1. [11]

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**[Exhibit "B"—Petition for Order Directing Trustee  
to Sell Property, etc.]**

*In the District Court of the United States for the  
Central Division, District of Idaho.*

**IN BANKRUPTCY.**

In the Matter of FRANK M. PINDEL,

Bankrupt.

Respectfully represents Norman J. Holgate, Trustee of the estate of said bankrupt, that heretofore the said District Court of the United States, by its decision, rendered in said cause on the 20th day of May, 1912, made and entered, directed that the real estate, to wit, Lots numbered one (1), two (2), three (3) and four (4) of Section thirty-four (34), and lots numbered twenty-nine (29) thirty (30), thirty-one (31) and thirty-two (32) of Section twenty-seven (27) in township thirty-four (34), North of Range one (1), West of the Boise Meridian, one hundred and sixty (160) acres, subject to the claim of homestead under the laws of the State of Idaho, in the

sum of Five Thousand (\$5,000.00) Dollars, should be, unless the bankrupt should within thirty (30) days after the rendition of said decision, pay to the Trustee the sum of Four Thousand (\$4,000.00) Dollars, the value over and above said \$5,000.00 of said real estate, that the same should be sold by the Trustee, freed from said exemption and the proceeds applied in the satisfaction of the claims of creditors of said bankrupt.

The said decision having been certified for review to the Circuit Court of Appeals of the United States for the Ninth Circuit and the said decision having been affirmed and more than 30 days having now passed since said affirmance and said \$4,000.00 not having been paid, your petitioner, as Trustee of said estate, asks that an order be now issued, authorizing and directing him to proceed at once and sell the said property at public auction, accepting of no bid less than \$5,000.00 and on the sale of said property, that \$5,000.00 of the [12] proceeds, less the costs and expenses of review in the U. S. Circuit Court of Appeals, be paid to the said bankrupt and Sarah E. Pindel, his wife, in lieu of their homestead exemption in said property, and the balance to be reported for payment of fees and expenses and creditors' claims, all pursuant to the said decision of the said District Court.

NORMAN J. HOLGATE,  
Trustee. [13]



**Exhibit "D"—Notice of Sale of Real Estate.**

*In the District Court of the United States for the  
Central Division, District of Idaho.*

In the Matter of FRANK M. PINDEL,  
Bankrupt.

Notice is hereby given that in pursuance of an order of the Referee in Bankruptcy for the above-entitled court, made on the first day of March, 1913, in the matter of the estate of Frank M. Pindel, Bankrupt, the undersigned, the Trustee in Bankruptcy of said estate, will sell at public auction to the highest bidder, for cash, lawful money of the United States of America, and subject to confirmation by the said Court, at the front door of the Lewis County District courtrooms (Nez Perce Opera-house Building in Nez Perce, Idaho, being the place where the District Court in and for Lewis County now is holding or will have held its last term of court), on Saturday, the fifth day of April, 1913, at ten o'clock A. M., all the right, title and interest of the said Frank M. Pindel, bankrupt, and all the right, title and interest of the heirs of the said Frank M. Pindel, bankrupt, in and to those certain lots, pieces or parcels of land situated in the county of Lewis, State of Idaho, and more particularly described as follows, to wit:

Lots numbered one (1), two (2), three (3), and four (4), of Section thirty-four (34), and Lots numbered twenty-nine (29), thirty (30), thirty-one (31) and thirty-two (32), of Section twenty-seven (27), in Township thirty-four (34), North of Range one

(1), West of the Boise Meridian, One Hundred and Sixty (160) acres.

Terms and conditions of said sale, cash, lawful money of the United States, ten per cent of the purchase money to be paid to the said Trustee on the day of the sale, and the balance on [14] confirmation of the sale by the Court.

Dated and signed this 5th day of March, 1913.

NORMAN J. HOLGATE,  
Trustee in Bankruptcy of the Estate of Frank M.  
Pindel, Bankrupt. [15]

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**[Affidavit of Norman J. Holgate Re Posting of  
Notice of Sale, etc.]**

*In the District Court of the United States for the  
Central Division, District of Idaho.*

**IN BANKRUPTCY.**

In the Matter of FRANK M. PINDEL,  
Bankrupt.

**AFFIDAVIT.**

State of Idaho,  
County of Nez Perce,—ss.

Norman J. Holgate, being first duly sworn, on his oath states: That on the fifth day of March, 1913, he posted upon the Opera-house at Nez Perce, Idaho, in plain view of passers-by upon the street, a full and true copy of the annexed Notice of Sale of Real Estate, securely fastening the same so it would permanently remain so posted until the day of sale; and on March 6th, 1913, he posted at the front of the post-office in the village of Vollmer, and also at the front

of the postoffice of the village of Ilo, both in Lewis County, Idaho, in each place a full and true copy of the annexed Notice of Sale of Real Estate, said notice in each instance being placed in view of the passing public and securely fastened so as to probably remain in place until the day of sale; that said three notices so posted were posted in three of the most public places of Lewis County, the county in which the land noticed to be sold is situated; affiant is the Trustee of said estate, and over the age of twenty-one years.

Farther affiant saith not.

NORMAN J. HOLGATE.

Subscribed and sworn to before me this 23d day of April, 1913.

[Seal]

E. O'NEILL,

Notary Public in and for the County of Nez Perce,  
Idaho. [16]

**Exhibit "E"—Excerpt from "Nez Perce Herald"**  
**Re Notice of Sale of Real Estate.]**

THE NEZ PERCE HERALD.

VOL. 16, No. 30.

NEZ PERCE, IDAHO, THURSDAY.  
MARCH 6, 1913.

\* Printed Notice of Sale of Real Estate same as Exhibit "D."

[Endorsed]: Filed May 23, 1913. A. L. Richardson, Clerk. [17]

[Opinion Re Claim of D. F. Wolgamott, etc.]

*In the United States District Court for the District  
of Idaho, Central Division.*

In the Matter of FRANK PINDEL,

Bankrupt.

MEMORANDUM DECISION ON CLAIM OF D.  
F. WOLGAMOTT FOR COMPENSATION  
FOR SERVICES FOR MAKING RECORD  
OF TESTIMONY.

June 10, 1914.

DIETRICH, District Judge:

The facts in this matter may be briefly stated. The bankrupt interposed objections to the allowance of the claim of the Bank of Nez Perce against the estate. A hearing was ordered, and the parties requested the claimant, D. E. Walgamott, to take the testimony. Apparently he was not a stenographer, for the testimony was typewritten as it was given. An original copy was made for the referee, and two carbon copies were made, one for counsel upon either side. Apparently the only understanding as to the rate of compensation was that it should be reasonable. Each party was to pay one-half the amount thereof. The hearing extended over the period of twenty-nine days, and the testimony written down aggregates 2050 folios. When the hearing was completed Wolgamott presented to the bank a bill for \$256.25, the charge being at the rate of fifteen cents per folio for the original copy, and five cents per folio for each carbon copy. The bank having declined to pay that



amount, the claimant brought suit against it in the Probate Court of Lewis County, his claim there being for \$435.65, upon the basis of a charge of twenty-two and one-half cents per folio for the original, and ten cents per folio for each of the copies. Upon application by the bank to this Court, a temporary restraining order was issued, enjoining the claimant [18] from proceeding in the State court, but before a final hearing could be had upon the question of the propriety of such injunction, the parties have stipulated that the suit in the Probate Court may be dismissed, and that the claimant's compensation may be determined in this proceeding, and, as I understand, the question has now been submitted for decision upon the record as heretofore made.

Strictly speaking, there is no statute to which the question can be referred. In subdivision 5 of Section 38 of the Bankruptcy Act, it is provided that a referee may, under certain circumstances, authorize the employment of a stenographer, at the expense of the estate, "at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings." So far as I am aware, there is no other statutory provision, and this one has no application except by analogy. It contemplates compensation to a stenographer who takes the proceedings in shorthand and then transcribes his notes, and the maximum compensation for such service which can be allowed is at the rate of ten cents per folio. Plainly the services of a typewriter operator do not command as high a compensation as those of a stenographer. There are comparatively few competent court sten-

ographers, but many skilled operators, and court reporting is highly compensated because it requires an unusual degree of skill. It does not appear why the parties did not secure the services of a stenographer in this case. The hearing extended over an unusual period of time, the average amount written daily being only about seventy folios. I am inclined to think that compensation at the rate of \$10.00 per day for the services rendered would be fair. Probably such services could be employed for a smaller compensation, but inasmuch as the parties did not see fit to make a definite agreement, I shall resolve such doubt as I have in favor of the claimant. The total compensation, therefore, which the claimant is entitled to receive is \$290.00, [19] one-half of which, or \$145.00, is, in accordance with the agreement, to be paid by the bank. The bank is therefore directed to pay to the claimant, D. E. Wolgamott, the sum of \$145.00, he to give a receipt in full.

[Endorsed]: Filed June 10, 1914. A. L. Richardson, Clerk. [20]

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**[Opinion Re Account of Trustee.]**

In the Matter of FRANK M. PINDEL,

Bankrupt.

**MEMORANDUM RELATIVE TO ACCOUNT OF  
TRUSTEE.**

June 11, 1914.

DIETRICH, District Judge:

There was submitted together with the claim of the Bank of Nez Perce and the question of the sale of the

real estate an informal account of the trustee for moneys disbursed. The theory upon which this account seems to have been presented was that if the bankrupt could be advised of the total amount of the valid claims against the estate, including expenses of administration, he might be able to procure the funds with which to pay all of the indebtedness, and thus avoid the necessity of selling the land constituting the homestead. My first impression was that possibly I could with propriety pass upon the validity of the several items, but upon reflection I have reached the conclusion that the account ought to be presented in a formal way, and an opportunity given to creditors to object thereto. As is said in Collier on Bankruptcy (9th ed.), at page 664, in speaking of trustee's accounts: "Accounts are usually submitted to creditors at meetings called for that purpose, and if passed by them are approved." I have therefore decided to reverse the order of the referee, without prejudice to a consideration of the trustee's account when the same is formally presented and a hearing relative thereto brought on in the regular way. In order that there may be no misunderstanding, it is proper to say at this time that the claim of the trustee for reimbursement for expenses incurred by him cannot be made a charge upon [21] the \$5,000.00 exemption of the bankrupt. Such claims of the trustee as may ultimately be held to be valid are charges only against the estate, and the exempt property is no part of the estate, and is not subject to administration.

It should further be added that the trustee's accounts have no necessary relation to his right, such



as he may have, to recover from the bankrupt and his wife expenses of litigation to which they have been unsuccessful parties. A trustee's account involves a relation only between the trustee and the estate, and not between the trustee and third parties. If the trustee has properly paid out any money on account of litigation upon behalf of the trust estate, he is entitled to reimbursement, even though the estate may not be entitled to recover the amount of such disbursement from the other party to the litigation. It seems that in the Circuit Court of Appeals, in the matter that was taken there for review, the trustee was awarded costs to the amount of \$285.70. If he paid out this amount of money on account of such litigation, he is entitled to reimbursement from the estate for the amount thereof, and in turn, as trustee of the estate, he is entitled to recover that amount from the unsuccessful parties to the litigation, provided they have property subject to process. Their exempt property is, of course, not subject to process. Because of some apparent confusion, I desire to emphasize the fact that in his relation to other parties to litigation, the trustee stands like any other litigant. If he is successful and is awarded the costs, he may recover such costs for the benefit of the estate, but in all proper litigation in which the trustee is involved, as trustee of the estate, he is entitled to be reimbursed from the estate for his expenses reasonably incurred, whether he be successful or unsuccessful; and, of course, as to third parties he is subject to the same limitations, and must comply with the law and the rules the same as any other litigant,



if he would recover from them the costs of suit. [22]

Apparently there is no money in the hands of the trustee, and indeed there has been very little with which to pay expenses. It is to be inferred that the Bank of Nez Perce, the largest creditor, has advanced some money for expense of litigation, etc. To what extent, if at all, the trustee can make claim for reimbursement on account of such expenditures is left for future consideration; that is to say, the trustee may present his accounts, and the whole matter—what amount can properly be allowed, and upon account of what expenditure—is left for the consideration, first, of the creditors, and thereafter of the referee, and thereafter, if any party is dissatisfied, of the Court, upon petition for review. It is, of course, desirable that no unnecessary expense be incurred in a hearing upon the justness or validity of such claims as may be presented by the trustee, and in so far as the evidence already taken is permanent and material, the parties to any controversy can doubtless agree that it shall be used, without the necessity of taking it over again, but the account be presented anew, and in sufficient detail so that it may be easily understood, and, so far as possible, accompanied by vouchers for actual expenditures.

It may not be improper to suggest that if moneys come into the hands of the trustee available for the purpose of paying the expenses of administration, the referee could at once, and without a hearing, direct the trustee to pay to his counsel a fair amount upon account. Apparently counsel have rendered services covering a considerable period of time without any

compensation whatsoever. Such payment could be made without foreclosing the question as to what shall ultimately be allowed as compensation in full. It is to be hoped that the estate may be brought to a speedy close, including the settlement of the trustee's accounts and the payment of all valid claims on account of expenses of administration.

[Endorsed]: Filed June 11, 1914. A. L. Richardson, Clerk. [23]

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In the Matter of FRANK M. PINDEL,  
A Bankrupt.

**Praeipice for Additional Transcript.**

The bankrupt requests the clerk of the above-entitled court to certify to the United States Circuit Court of Appeals for the Ninth Circuit the following, to wit:

The two opinions, or orders, of the above United States District Court, made and entered subsequent to the opinions and orders of June 3d, 1914; the order of sale of the homestead of the bankrupt, and the notice of sale and the proof thereof, the order of sale made by the Referee and on which the homestead was sold.

BEN F. TWEEDY,  
Attorney for Bankrupt.

[Endorsed]: Filed July 8, 1914. A. L. Richardson, Clerk. [24]

**[Certificate of Clerk U. S. District Court to  
Additional Transcript of Record.]**

*In the District Court of the United States for the  
Central Division, District of Idaho.*

In the Matter of FRANK M. PINDEL, Bankrupt.

I, A. L. Richardson, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing transcript of pages from 1 to 25, inclusive, contain true and correct copies of original Order of Sale, Return to Order of Sale, Memorandum Decision on Claim of D. E. Wolgamott, filed June 10th, 1914, Memorandum Decision Relative to Account of Trustee, filed June 11, 1914, and Praecipe, filed July 8th, 1914, in the above-entitled matter as the same appear of record and on file in my office.

I further certify that the cost of the record amounts to the sum of \$12.70, and that the same has been paid by the bankrupt.

WITNESS my hand and the seal of said Court affixed at Boise, Idaho, this 11th day of July, 1914.

[Seal]

A. L. RICHARDSON,

Clerk. [25]

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**[Notice of Filing of Petition for Revision, etc.]**

*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

In the Matter of the Bankruptcy of FRANK M.  
PINDEL,

A Bankrupt.



NOTICE AND PROOF OF SERVICE OF THE  
NOTICE AND OF THE PETITION FOR  
REVIEW.

Whereas, heretofore, on the 3d of June, 1914, the Honorable United States District Court for the District of Idaho, Central Division, rendered and entered an opinion and orders reversing and vacating the orders of the Honorable Referee, in the matter of the bankruptcy of Frank M. Pindel, a bankrupt, and affirming the sale, heretofore made by the trustee of the homestead of the bankrupt, and allowing the claim of the Bank of Nez Perce, and the bankrupt, Frank M. Pindel, being aggrieved thereby because of error of law;

Whereas, the bankrupt, Frank M. Pindel, has prepared his petition for review on matters of law by the above-entitled court, making the opinion and orders of the above United States District Court, and the findings of fact, opinion, and orders of the Hon. Referee, a part thereof, to show to the above-entitled court the facts and the holdings and orders of the said United States District Court to be reviewed on questions of law, and thereupon stating in said petition the errors of law complained of by the said bankrupt:

Now, therefore, you, Bank of Nez Perce, and you, Eugene O'Neill, its attorney, and you, Finis Bently, and you, Norman J. Holgate, and you Finis Bently, his attorney, are hereby notified that the bankrupt, Frank M. Pindel, has forwarded the said original petition and a certified transcript, to be filed together, and the \$25.00 deposit, to the clerk of the United



States Circuit Court of Appeals for the Ninth Circuit, and the said petition and the said certified transcript and the said orders and decisions mentioned in the said petition will be immediately filed by the said clerk of said court, and the record printed and copies thereof will be distributed by the said clerk to each of you as required by the rules of the said court.

EDWIN H. WILLIAMS,  
BEN F. TWEEDY,

Attorneys for Bankrupt, Frank M. Pindel.

State of Idaho,  
County of Nez Perce,—ss.

Ben F. Tweedy, being first duly sworn, upon his oath says that on the 27th day of June, 1914, he served the foregoing notice and the petition for review mentioned therein upon the Bank of Nez Perce and upon Finis Bently and upon Norman J. Holgate, the Trustee, by delivering a copy of the aforesaid notice and a copy of the foregoing petition, omitting the certified transcript and a copy of the orders of the United States District Court and of the Referee, personally to Eugene O'Neill, and by leaving a copy thereof in the law office of Finis Bently with Lawrence O'Neill for the said Finis Bently, in Lewiston, Idaho; that affiant is a citizen of the United States and of Idaho, and at the time of the foregoing service of said notice and petition was over twenty-one years of age, and a resident and elector of Idaho.

BEN F. TWEEDY.

Subscribed and sworn to before me this 27th of June, 1914.

[Seal]

D. J. NEEDHAM,

Notary Public, Residing at Lewiston, Idaho.

[Endorsed]: No. 2439. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Bankruptcy of Frank M. Pindel, a Bankrupt. Notice of Filing Petition and Record, and Proof of Service of Notice and Petition. Filed Jun. 30, 1914. F. D. Monckton, Clerk.

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[Endorsed]: No. 2439. United States Circuit Court of Appeals for the Ninth Circuit. Frank M. Pindel, Petitioner, vs. Norman J. Holgate, as Trustee in Bankruptcy of the Estate of Frank M. Pindel, Bankrupt, and the Bank of Nez Perce, Respondents. In the Matter of Frank M. Pindel, Bankrupt. Additional Transcript of Record in Support of Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, Certain Orders of the United States District Court for the Central District of Idaho.

Received and filed July 17, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.